UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSEPH DANIELS,

Plaintiff,

-against-

1710 REALTY LLC, a/k/a 1710 REALTY ASSOCIATES,

Defendant.

10-CV-0022 (RER)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S CAUSE OF ACTION UNDER THE NEW YORK LABOR LAW

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSEPH DANIELS, Plaintiff, -against- 1710 REALTY LLC, a/k/a 1710 REALTY ASSOCIATES, Defendant.	10-CV-0022 (RER)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S CAUSE OF ACTION UNDER THE NEW YORK LABOR LAW

Defendant 1710 Realty LLC, a/k/a 1710 Realty Associates ("1710"), submits this memorandum of law in support of its motion to dismiss plaintiff's New York Labor Law claim pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

PRELIMINARY STATEMENT

Plaintiff concedes that he was paid all wages due him under the New York Labor Law and has withdrawn his State law claims for unpaid minimum wages, unpaid overtime wages and unpaid spread-of-hours wages, all of which he had alleged in his Complaint. Just two causes of action remain: (1) 1710's alleged failure to pay all minimum and overtime wages due under the federal Fair Labor Standards Act ("FLSA"); and (2) 1710's alleged failure to tender payment to plaintiff on a weekly basis in accordance with Section 191 of the New York Labor Law. The Court has original jurisdiction over the FLSA claim. Plaintiff's only basis for invoking this Court's jurisdiction over the State law claim is the supplemental jurisdiction statute, 28 U.S.C. § 1367.

This Court does not have jurisdiction over plaintiff's sole remaining claim under the New York Labor Law because it is wholly unrelated to his FLSA claim. The question as to whether 1710 was required to tender payment to plaintiff on a weekly basis is premised upon a completely different set of operative facts than any issue as to his hours worked under the FLSA. Therefore, this Court does not have supplemental jurisdiction and should dismiss the State law claim. Alternatively, the Court should decline to exercise supplemental jurisdiction because whether a remedy is available for a free-standing violation of Section 191 of the New York Labor Law is a novel and complex issue that has yet to be determined by New York courts.

ARGUMENT

POINT I

THE COURT DOES NOT HAVE SUPPLEMENTAL JURISDICTION OVER PLAINTIFF'S STATE LAW CLAIM BECAUSE IT DOES NOT ARISE OUT OF THE SAME CASE OR CONTROVERSY AS HIS FLSA CLAIM.

A. Standard for Motion to Dismiss Pursuant to Rule 12(b)(1)

A case is "properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000). "[F]ailure of subject matter jurisdiction is not waivable and may be raised at any time by a party or by the court sua sponte." Lyndonville Savings Bank & Trust Co. v. Lussier, 211 F.2d 697, 700-01 (2d Cir. 2000). If a court "determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action." Voss v. United States, 2010 U.S. App. LEXIS 748, at *2 (2d Cir. Jan. 13, 2010) (quoting Fed. R. Civ. P. 12(h)(3)); see also Cave v. E. Meadow Union Free School Dist., 514 F.3d 240, 250 (2d Cir. 2008) ("If a court perceives at any state in the proceedings that it lacks subject matter jurisdiction, then it must take proper notice of the defect by dismissing the action").

B. The State and Federal Claims Do Not Share a Common Nucleus of Operative Fact.

The supplemental jurisdiction statute provides in relevant part:

> [I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the *same case or controversy* under Article III of the United States Constitution.

28 U.S.C. § 1367(a) (emphasis added). It is well-settled that State law claims are part of the "same case or controversy" as federal claims when they "derive from a common nucleus of operative fact and are such that a plaintiff would ordinarily be expected to try them in one judicial proceeding." United Mine Workers v. Gibbs, 383 U.S. 715, 725, 86 S. Ct. 1130 (1966). Therefore, the Court "can only exercise supplemental jurisdiction over the Plaintiff's Labor Law claim if it arises from the same common nucleus of operative fact as the Plaintiff's federal cause of action." Hoops v. KeySpan Energy, 2011 U.S. Dist. LEXIS 23117, at *23 (E.D.N.Y. Mar. 8, 2011). When determining whether claims arise from a common nucleus of operative fact, the Second Circuit looks to whether "the facts underlying the federal and state claims substantially overlapped . . . [or] the federal claim necessarily brought the facts underlying the state claim before the court." Achtman v. Kirby, McInerney & Squire LLP, 464 F.3d 328, 335 (2d Cir. 2006) (quoting Lyndonville, 211 F.3d at 704).

In this case, the facts supporting plaintiff's State law claim, which alleges that defendant was required to pay plaintiff on a weekly basis pursuant to Section 191 of the New York Labor Law, do not overlap in any way with plaintiff's claim for unpaid minimum and overtime wages under the FLSA. The FLSA does not regulate or address the frequency or timing of wage payments. Instead, plaintiff's FLSA claim involves an inquiry into what hours plaintiff worked in each workweek over the last approximately two years of his employment and whether he is entitled to additional minimum wages or overtime wages during such period. The facts underlying such claim necessarily involve an examination of plaintiff's duties and responsibilities, the nature of the additional duties allegedly performed by plaintiff for which he seeks additional compensation, the hours plaintiff worked during each workweek during the relevant period, whether defendants knew of or authorized plaintiff's alleged work or "suffered or permitted" him to work within the meaning of the FLSA, and whether plaintiff was "on-call" during any part of each workweek as defined in the FLSA and the U.S. Department of Labor's regulations promulgated thereunder.

In contrast, plaintiff's State law claim involves no such inquiries, since it is undisputed that Plaintiff was paid all minimum and overtime wages to which he was entitled under State law. Instead, his State law claim requires a determination of whether plaintiff was a "manual worker" or another class of worker as defined in Section 191 of the New York Labor Law, a review of the frequency of defendant's wage payments to plaintiff over the last approximately six (6) years of his employment, and what, if any, remedy would be available to plaintiff under Article 6 of the New York Labor Law, which sets forth a remedial scheme wholly distinct from the FLSA's. Thus, the facts underlying plaintiff's FLSA claim do not "substantially overlap" or overlap in any way with his State law claim. There is no common nucleus of operative fact between the two claims.

The mere fact that both the FLSA and State law claims involve the employment relationship does not in itself establish a basis for supplemental jurisdiction, as this Court has repeatedly held. See, e.g., Rivera v. Ndola Pharmacy Corp., 497 F. Supp. 2d 381, 395 (E.D.N.Y.

2007) (holding that the "employment relationship is insufficient to create a 'common nucleus of operative fact' where it is the sole fact connecting plaintiff's federal overtime claim and the remaining state law claims"); Hoops v. KeySpan Energy, 2011 U.S. Dist. LEXIS 23117 (dismissing plaintiff's New York Labor Law claim for compensation for maintenance and laundering of uniforms as not forming part of "same case or controversy" as his FLSA overtime claim). See also Torres v. Gristede's Operating Corp., 628 F. Supp. 2d 447, 468 (S.D.N.Y. 2008) (finding insufficient showing to invoke supplemental jurisdiction where "none of the events alleged in [the] state law . . . claims are relevant to Plaintiff's [federal] overtime claims"); Lyon v. Whisman, 45 F.3d 758 (3d Cir. 1995) (holding there was "so little overlap between the evidence relevant to the FLSA claim and state claims" where the FLSA claim involved "very narrow, well-defined factual issues about hours worked" and the state claim for underpayment of bonuses was "quite distinct").

Other than arising out of the employment relationship, plaintiff's FLSA and State law claims are not related in any way. Not only do such claims share no common facts, they involve wholly different legal issues, a factor the Second Circuit has deemed to be highly relevant to the supplemental jurisdiction analysis. See Young v. N.Y. City Transit Auth., 903 F.2d 146 (2d Cir. 2000) (finding no "common nucleus of operative fact" where the federal claim raised "legal issues completely unrelated to those presented by the state" claim); Bu v. Benenson, 181 F. Supp. 2d 247, 254 (S.D.N.Y. 2001) (claims were not "part of the same case or controversy" where state law claims "involve[d] different rights, different interests, and different underlying facts" from federal law claims).

Therefore, the Court does not have supplemental jurisdiction over plaintiff's State law claim under Section 1367(a), and it must be dismissed.

POINT II

THE COURT SHOULD DECLINE TO EXERCISE SUPPLEMENTAL JURISDICTION OVER PLAINTIFF'S STATE LAW CLAIM BECAUSE IT RAISES NOVEL AND COMPLEX ISSUES OF STATE LAW.

Even if the bare requirements of Section 1367(a) were satisfied here, the Court should nonetheless decline to exercise supplemental jurisdiction over plaintiff's State law claim. Section 1367(c) provides that district courts may decline to exercise supplemental jurisdiction if "the claim raises a novel or complex issue of State law." 28 U.S.C. § 1367(c). Both the United States Supreme Court and Second Circuit have specifically instructed district courts to avoid exercising jurisdiction over unresolved issues of state law.

> [I]t is fundamental that needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law.

Young, 903 F.2d at 163-64 (quoting Mine Workers v. Gibbs, 383 U.S. at 726). Therefore, a "district court ought not reach out for . . . issues, thereby depriving state courts of opportunities to develop and apply state law." Young, 903 F.2d at 164. "Where a pendent state claim turns on novel or unresolved questions of state law, . . . principles of federalism and comity may dictate that these questions be left for decision by the state courts." Seabrook v. Jacobson, 153 F.3d 70, 72 (2d Cir. 1998).

Here, plaintiff's State law claim unquestionably presents a complex issue of State law, better left to resolution by the courts of the State of New York. Even if plaintiff were required to be paid weekly in accordance with Section 191 of the New York Labor Law, it is highly doubtful that there is any remedy available for a violation of that section. Plaintiff cites only to Article 6 of the New York Labor Law's general liquidated damages provision, which states that "upon a finding that the employer's *failure to pay the wage required* by this article was willful, an additional amount as liquidated damages equal to twenty-five percent of the total amount of the *wages found to be due*" are allowed to a prevailing plaintiff. N.Y. Labor Law § 198 (1-a) (emphasis added). Yet, as plaintiff concedes, he was paid all wages due him under the New York Labor Law. Therefore, there was no "failure to pay the wage required" and are no "wages due" under the New York Labor Law. Plaintiff's contention that he is entitled to liquidated damages merely upon proof of an independent violation of Section 191 thus appears contrary to the plain language of Section 198.

The question as to whether Section 198 would provide any remedy to plaintiff is also novel. Neither party has cited to this Court any precedent of any court, whether State or Federal, that holds that a remedy is available under the Labor Law for a stand-alone violation of Section 191's frequency-of-payment provisions.

Thus, plaintiff's State law claim presents a novel and complex issue unresolved by the State's courts. In the interest of comity and deference, this Court should therefore decline to exercise supplemental jurisdiction over it. See Centeno-Bernuy v. Becker Farms, 564 F. Supp. 2d 166 (W.D.N.Y. 2008) (declining to exercise supplemental jurisdiction over state claim because the parties did not cite any case directly addressing whether a farm worker who performs both farm and non-farm work is entitled to overtime under the New York Labor Law, thus presenting a "novel issue of state law"); Spiegel v. Schulmann, 2006 U.S. Dist. LEXIS 86531 (E.D.N.Y. Nov. 30, 2006) (declining to exercise supplemental jurisdiction over complex issue of state law under the New York State Human Rights Law and New York City Human Rights Law, which were issues of "first impression"); Local 621, S.E.I.U., AFL-CIO v. City of N.Y., 2000 U.S. Dist. LEXIS 14235 (S.D.N.Y. Sept. 29, 2000) (holding that because state law claims raised novel or complex issues of state law, they were "more properly addressed in state courts"); Org'n. for the Advancement of Minorities with Disabilities v. Brick Oven Restaurant, 406 F. Supp. 2d 1120 (S.D. Cal. 2005) (finding that the remedial provisions of state statutes, which provided for damages "for each and every offense," were ambiguous, and declining to exercise supplemental jurisdiction over such "novel and complex issues of unresolved state law . . . better left to the [State's] courts").

Because plaintiff's State law claim involves a novel and complex issue of State law, it should be resolved by New York courts. Consequently, the Court should decline to exercise supplemental jurisdiction over plaintiff's State law claim.

CONCLUSION

For the foregoing reasons, defendant respectfully requests that the motion be granted, that plaintiff's New York Labor Law claim be dismissed in its entirety, and for such other and further relief as the Court may deem just and proper.

Dated: May 6, 2011
New York, New York

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